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2010 DEC 22 AM 10: 39

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6337

DATE COMPLAINT FILED: July 30, 2010

DATE OF NOTIFICATION: August 4, 2010

DATE ACTIVATED: September 24, 2010

EXPIRATION OF SOL: July 13, 2015 – July 30, 2015

COMPLAINANT:

James R. Barry

RESPONDENTS:

Jay Riemersma for Congress Campaign Committee and
John Faber, in his official capacity as Treasurer;
Republican Member Senate Fund and Scott B.
MacKenzie, in his official capacity as Treasurer
John Patrick Yob and Strategic National Campaign
Management LLC
Charles Yob

RELEVANT STATUTES:

2 U.S.C. § 441a(a)(2)

2 U.S.C. § 441a(f)

11 C.F.R. § 110.4(c)(3)

INTERNAL REPORTS CHECKED:

FEC Disclosure Repprts

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint in this matter alleges that the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer ("the Committee"), Jay Riemersma's 2010 principal campaign committee for the U.S. House of Representatives for Michigan's Second Congressional District, coordinated with the Republican Member Senate Fund ("the Fund") in spending \$13,636 on radio ads promoting Riemersma's candidacy in July 2010. Thus, the complaint alleges that the Fund made, and the Committee received,

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1 excessive contributions in violation of Sections 441a(a)(2) and 441a(f) of the Federal Election
2 Campaign Act of 1971, as amended ("the Act"). The complaint further alleges that the
3 Committee accepted and retained anonymous cash contributions in excess of \$50, in violation
4 of 11 C.F.R. § 110.4(c)(3). In response, the Respondents argue that the complaint is based on
5 unsupported assumptions and inferences, there was no coordination, and each of the cash
6 contributions was less than \$50.

7 Upon review of the complaint, responses, and available information, there appears to
8 be no basis for concluding that the Committee coordinated with the Fund on the radio ads at
9 issue. Therefore, we recommend that the Commission find no reason to believe that the Jay
10 Riemersma for Congress Campaign Committee and John Faber, in his official capacity as
11 Treasurer, violated 2 U.S.C. § 441a(f), that the Republican Member Senate Fund and Scott B.
12 MacKenzie, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(2), or that John
13 Patrick Yob and Strategic National Campaign Management LLC or Charles Yob violated the
14 Act. In addition, because we have no information that refutes the Committee's assertion that
15 all of its anonymous contributions were in amounts of less than \$50, we further recommend
16 that the Commission find no reason to believe that the Jay Riemersma for Congress Campaign
17 Committee and John Faber, in his official capacity as Treasurer, violated 11 C.F.R.
18 § 110.4(c)(3), and close the file.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Background**

21 The complaint alleges that the Committee coordinated with the Fund in spending
22 \$13,636 on radio ads promoting Riemersma's candidacy in July 2010. In support of this
23 allegation, the complaint asserts that:

- 1 • Riemersma retained Strategic National Campaign Management LLC ("Strategic
2 National"), a consulting company, and the Committee paid the company at least
3 \$54,288.52 from August 28, 2009 – July 14, 2010. Complaint, pp. 1-2.
4
- 5 • John Yob is a principal and the "resident agent" of Strategic National, and is also a
6 campaign consultant and spokesman for the Riemersma campaign.
7 Complaint, p. 2. Charles Yob, John Yob's father, also works for Strategic
8 National. *Id.* The Fund is controlled by Charles Yob and John Yob. *Id.*
9
- 10 • In mid-July 2010, the Fund ran radio advertisements promoting Riemersma and
11 attacking two of his opponents (Bill Huizenga and Wayne Kuipers) on
12 approximately 12 radio stations in Michigan. Complaint, pp. 2-3; see attached
13 advertisement script. Also attached to the complaint are agreements between the
14 Fund and Citadel Broadcasting and Clear Channel, to which the Fund paid \$10,600
15 and \$3,036, respectively. Attached to the Clear Channel agreement is a Political
16 Inquiry form, identifying Chuck Yob as the Chairman of the "Republican
17 Committee Member Fund" (sic). Complaint, p. 2.
18
- 19 • John Yob continues to be involved with the Republican Member Senate Fund PAC
20 while at the same time managing the Riemersma campaign, because: (1) the
21 broadcast agreements were faxed from a machine used by Nevada Republican U.S.
22 Senate candidate Sharron Angle; (2) John Yob and Strategic National also provided
23 campaign services to Sharron Angle; and (3) John Yob may have been in Nevada
24 when the broadcasting agreements were faxed. Complaint, p. 3.
25

26 Based on his belief that the Committee and the Fund coordinated their activities to
27 create and run the advertisements, the complainant argues that the Republican Member Senate
28 Fund violated 2 U.S.C. § 441a(a)(2) by making an excessive in-kind contribution to the
29 Committee, and that the Committee violated 2 U.S.C. § 441a(f) by knowingly receiving the
30 in-kind contribution. The complaint further alleges that the Committee has accepted and
31 retained anonymous cash contributions in excess of \$50 in violation of 11 C.F.R.
32 § 110.4(c)(3).

33 In response, the Committee argues that the complaint is based on innuendo and
34 incorrect assumptions that are refuted by John Yob's sworn affidavit, which is attached to its
35 response. Committee Response at 1. The Committee states that Strategic National employed

1 John Yob as a political consultant, and that through Strategic National's consulting agreement
2 with the Committee, he provided strategic and campaign management consulting services to
3 the Committee. Committee Response at 2. The Committee further asserts that John's father
4 Charles Yob is an independent consultant with whom Strategic National has at times
5 contracted to do work on various elections. *Id.* The Committee states, however, that Strategic
6 National never employed, or entered a contract with, Charles Yob to do any work regarding
7 the Riemersma campaign. *Id.*

8 In addition, the Committee asserts that John Yob and Charles Yob did not have any
9 contact regarding the Republican Member Senate Fund radio advertisement at issue in this
10 matter. *Id.* Further, although John Yob was at one point on the Board of Directors of the
11 Republican Member Senate Fund, he resigned from that position in December 2009, and
12 currently has no affiliation with the Fund and had no involvement with the advertisements at
13 issue. *Id.* Finally, the Committee asserts that John Yob was not in Nevada when Jordan
14 Gehrke, who signed the broadcast agreements, faxed them on behalf of the Fund, and John
15 Yob did not have any knowledge or involvement with those agreements. *Id.*

16 In John Yob's affidavit, he avers, *inter alia*, that he was not in Nevada on July 13,
17 2010, and did not send the fax mentioned in the complaint; he had no contact with Charles
18 Yob whatsoever regarding the communications at issue, nor to the best of his knowledge, did
19 anyone else associated with the Riemersma campaign; and that he was on the Board of
20 Directors for the Republican Member Senate Fund until December 2009, when he resigned.
21 See Committee Response, Attachment 1.

22 With respect to the allegation that the Committee accepted and retained anonymous
23 cash contributions in excess of \$50 in violation of 11 C.F.R. § 110.4(c)(3), the Committee

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1 asserts that the contributions cited in the complaint are batches of unitemized contributions in
2 amounts of less than \$50 each; Washington Intelligence Bureau Inc., the company that
3 processes the Committee's receipts, assured the Committee that it followed FEC guidelines
4 regarding the acceptance of anonymous cash donations; and the Committee fully and
5 correctly reported the contributions. Committee Response at 3.

6 The Republican Member Senate Fund argues in its response that the complaint is
7 without merit and fails to show any coordination between the Fund and the Committee. Fund
8 Response at 1. In particular, the Fund asserts that:

- 9 • The complaint does not provide any information that the Riemersma Campaign
10 either requested the communication or that they assented to its creation by the
11 Fund. The complaint asserts only that a fax was sent from Nevada regarding
12 the advertisement at issue and that John Yob may have been in Nevada at that
13 time to send it. John Yob, however, had not been in Nevada since July 11,
14 2010, two days before the fax was sent. In addition, the Fund hired Jordan
15 Gehrke to create and run the advertisement, Mr. Gehrke placed the
16 communication at the request of Charles Yob, and Charles Yob did not discuss
17 the communication with anyone involved in the Riemersma campaign.
18
- 19 • Charles Yob was not an agent of the Riemersma Campaign and had no contact
20 with anyone in the Campaign or at Strategic National regarding the ads at
21 issue, nor did he notify anyone at either organization of his intention to
22 purchase such communications. The complaint argues generally that since
23 Charles and John Yob are related, their respective organizations are inherently
24 coordinating their activities. However, Charles Yob and John Yob are two
25 separate individuals and it cannot be inferred from their familial relationship
26 that they are coordinating their activities. Moreover, John Yob resigned from
27 the Fund, and Charles Yob was not involved in Jay Riemersma's campaign in
28 his work for Strategic National.
29
- 30 • The complaint provides no information that the candidate or his campaign
31 committee was materially involved in decisions regarding the communication,
32 as the substance of the ad contains information similar to that publicly
33 available on Riemersma's website.
34

35 Fund Response at 3-5.

1 The Fund attached John Yob's affidavit, *see* description, *supra*, and also Charles
2 Yob's affidavit to its response. Fund Response, Exhibit 1. Charles Yob avers, *inter alia*, that
3 he is the President, Secretary, Treasurer and a Director of the Fund; that no one in the
4 Riemersma campaign or at Strategic National contacted him regarding the creation,
5 production, or distribution of any communication; and that he never notified anyone at either
6 Strategic National or at Riemersma for Congress of his intention to purchase the
7 communications at issue. *Id.* He avers that any incidental political or fundraising help he
8 gave to the Riemersma campaign was either on his own time or through the Fund, but that he
9 had no contact at all regarding the communications at issue with either the Riemersma
10 campaign or Strategic National. *Id.* Finally, he avers that while working on his various
11 contract projects for Strategic National, he received no information pertinent to the
12 communications at issue regarding the Riemersma campaign. *Id.*

13 B. **Allegation that the Republican Member Senate Fund made, and the**
14 **Riemersma for Congress Committee received, an excessive in-kind**
15 **contribution as a result of coordination**
16

17 Under the Act, no multicandidate political committee, such as the Republican Member
18 Senate Fund, may make a contribution, including an in-kind contribution, to a candidate and
19 his authorized political committee with respect to any election for Federal office, which, in
20 the aggregate, exceeds \$5,000. 2 U.S.C. § 441a(a)(2), *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R.
21 § 100.52(d)(1). The Act defines in-kind contributions as, *inter alia*, expenditures made by
22 any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a
23 candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i).
24 A communication is coordinated with a candidate, an authorized committee, a political party
25 committee, or agent thereof if it meets a three part test: (1) payment by a third-party;

1 (2) satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct"
2 standards. See 11 C.F.R. § 109.21.

3 In this matter, the first prong of the coordinated communication test is satisfied
4 because the Republican Member Senate Fund is a third-party payor. The second prong of this
5 test, the content standard, is satisfied because the ads at issue meet the definition of "public
6 communication" under 11 C.F.R. § 100.26; the ads refer to clearly identified candidates for
7 federal office (Jay Riemersma, Bill Huizenga, and Wayne Kuipers); and the ads were
8 apparently run in July 2010 in the clearly identified candidates' jurisdiction within 90 days of
9 the primary election, which was held on August 3, 2010. See 11 C.F.R. § 109.21(c)(4).

10 While the payment and content prongs of the coordinated communications regulations
11 appear to be satisfied in this matter, the conduct prong does not. The conduct prong is
12 satisfied where any of the following types of conduct occurs: (1) the communication was
13 created, produced, or distributed at the request or suggestion of a candidate or his campaign;
14 (2) the candidate or his campaign was materially involved in decisions regarding the
15 communication; (3) the communication was created, produced, or distributed after substantial
16 discussions with the campaign or its agents; (4) the parties contracted with or employed a
17 common vendor that used or conveyed material information about the campaign's plans,
18 projects, activities or needs, or used material information gained from past work with the
19 candidate to create, produce, or distribute the communication; (5) the payor employed a
20 former employee or independent contractor of the candidate who used or conveyed material
21 information about the campaign's plans, projects, activities or needs, or used material
22 information gained from past work with the candidate to create, produce, or distribute the
23 communication; or (6) the payor republished campaign material. See 11 C.F.R. § 109.21(d).

1 The complaint does not allege specific facts indicating that the conduct prong was met
2 in this matter, nor does publicly available information support that conclusion. Instead, the
3 complaint cites the positions held by John Yob and his father Charles Yob, and asserts,
4 "Fundamentally, any expenditure is inherently coordinated where, as here, the same person or
5 people running a candidate's campaign are able through a separate PAC to authorize creation
6 and dissemination of public communications that are intended to benefit the candidate whose
7 campaign they are running." Complaint at 4. However, the complaint contains no specific
8 information indicating that any of the conduct standards were satisfied in this matter.

9 Moreover, the Respondents have specifically denied facts that would give rise to a
10 conclusion that the conduct prong is satisfied pursuant to 11 C.F.R. § 109.21(d), and provided
11 sworn affidavits from John and Charles Yob supporting those denials. Namely, the
12 Respondents have specifically rebutted any implication that the ads at issue were created at
13 the request or suggestion of, with the material involvement of, or after substantial discussions
14 with, the candidate or his agents, thereby negating the existence of conduct at 11 C.F.R.
15 § 109.21(d)(1)-(3). See Fund Response, Exhibit 1, John Patrick Yob Affidavit at ¶ 5, and
16 Charles Yob Affidavit at ¶¶ 7-9.

17 Available information suggests that the common vendor and former employee or
18 independent contractor standards at 11 C.F.R. § 109.21(d)(4)-(5) are also not satisfied in this
19 matter. Charles Yob avers that he has "not been paid" by Strategic National to do any work
20 for the Riemersma campaign, but that he gave "incidental political or fundraising help" to the
21 campaign on his own, presumably as an independent contractor or volunteer, or through the
22 Fund. Fund Response, Exhibit 1, Charles Yob Affidavit at ¶¶ 5-6. While Charles Yob's
23 statement suggests that he provided unspecified services to the Riemersma campaign, he also

1 maintains that he had no contact at all regarding the communications at issue with either the
2 Riemersma campaign or Strategic National. *Id.* at ¶ 8. Consistent with this statement, we
3 have no information that Charles Yob received information material to the creation,
4 production, or distribution of the communication at issue during his work for the Riemersma
5 campaign, in whatever capacity, or that he used or conveyed such information to the Fund in
6 connection with the communication. Further, while John Yob provided consulting services to
7 the Committee through his employment with Strategic National, he avers that he had no
8 contact whatsoever with Charles Yob regarding the communication at issue, and that he
9 resigned from the Fund's Board of Directors in December 2009, approximately seven months
10 before the Fund began running the advertisement. Fund Response, Exhibit 1, John Yob
11 Affidavit at ¶¶ 5-6. In addition, it is possible that Charles Yob and/or the Fund obtained
12 information material to the creation, production, or distribution of the communication from a
13 publicly available source, namely, the Riemersma campaign's website, which contained
14 information similar to the advertisement at issue. *See* 11 C.F.R. § 109.21(d)(4)(iii) and
15 (d)(5)(ii) (these provisions, known as publicly available source exemptions, provide that the
16 conduct standard is not satisfied if the information material to the creation, production, or
17 distribution of the communication was obtained from a publicly available source). Finally,
18 while the information in the radio ad at issue is similar to information on the candidate's
19 website, it does not appear that the Fund republished in whole, or even in part, any campaign
20 materials.

21 Given the Respondents' denials, the speculative nature of the complaint, and the
22 absence of any other information suggesting coordination, the conduct prong of the
23 coordinated communications regulations has not been met, thus, there appears to be no

1 resulting violation of the Act. Therefore, we recommend that the Commission find no reason
2 to believe that the Jay Riemersma for Congress Campaign Committee and John Faber, in his
3 official capacity as Treasurer, violated 2 U.S.C. § 441a(f), that the Republican Member
4 Senate Fund and Scott B. MacKenzie, in his official capacity as Treasurer, violated 2 U.S.C.
5 § 441a(a)(2), or that John Patrick Yob and Strategic National Campaign Management LLC or
6 Charles Yob violated the Act.

7 C. **Allegation that the Jay Riemersma for Congress Campaign Committee**
8 **accepted and retained anonymous cash contributions in violation of**
9 **11 C.F.R. § 110.4(c)(3)**
10

11 Pursuant to 11 C.F.R. § 110.4(c)(3), a candidate or committee that receives an
12 anonymous cash contribution in excess of \$50 must promptly dispose of the amount over \$50.
13 While the complaint alleges that the Committee accepted and retained anonymous cash
14 contributions in excess of \$50 in violation of 11 C.F.R. § 110.4(c)(3), the Committee explains
15 that the contributions cited in the complaint are batches of unitemized contributions, and each
16 of these contributions was less than \$50. In support, the Washington Intelligence Bureau,
17 Inc., the company that processes the Committee's receipts, states in a letter that they could
18 verify that no single anonymous donation exceeded the \$50 limit by examining "the scanned
19 donation detail." See Committee Response, Attachment 2. The respondents' explanation that
20 the anonymous contributions were in amounts of less than \$50 is plausible, and we have no
21 information to the contrary. Therefore, we recommend that the Commission find no reason to
22 believe the Jay Riemersma for Congress Campaign Committee and John Faber, in his official
23


capacity as Treasurer, violated 11 C.F.R. § 110.4(c)(3).¹ We also recommend that the Commission close the file.

III. RECOMMENDATIONS

1. Find no reason to believe that the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(f) or 11 C.F.R. § 110.4(c)(3);
2. Find no reason to believe that the Republican Member Senate Fund and Scott B. MacKenzie, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(2);
3. Find no reason to believe that John Patrick Yob and Strategic National Campaign Management LLC violated the Act;
4. Find no reason to believe that Charles Yob violated the Act.
5. Approve the Attached Factual and Legal Analyses;
6. Approve the appropriate letters; and
7. Close the file.

P. Christopher Hughey
Acting General Counsel

12/22/10
Date

By: 
Stephen A. Gura
Deputy Associate General Counsel
for Enforcement


Roy Q. Luckett
Acting Assistant General Counsel


Tracey L. Ligon
Attorney

¹ We note that the complaint states that the ads at issue include the disclaimer, "Paid for by Republican Member Committee Fund. Not authorized by any candidate or candidate committee." The name of the paying committee is actually the Republican Member Senate Fund. This appears to be a minor technical violation not directly alleged as a violation in the complaint. Thus, we make no recommendation with respect to it.

**MUR 6337 - (Riemersma for Congress)
First General Counsel's Report**

1 **Attachments:**

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10 **5. Text of Radio Advertisement**

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Hey, Suzy, long time no see, how ya been?

Hey Tom, I'm doing good, how are you doing?

I'm doing good. Did you hear? Lansing insiders Bill Huizenga and Wayne Kuipers voted for the Michigan Business Tax. And get this - it's a tax that's already hurting already struggling families. And it's costing West Michigan jobs.

Yeah, I know. Bill Huizenga was a sponsor of the film incentive that gives tax dollars to Hollywood studios and it's led to corruption. We need to tell Kuipers and Huizenga that West Michigan can't afford their higher taxes and spending.

You know what, I think you hit the nail on the head. If Kuipers and Huizenga can't stand up to Jennifer Granholm, how do you think they're going to stand up to Barack Obama?

Well, have you heard about Jay Rienerama? He's a strong conservative leader and he's gonna stand up to the Obama administration and fight for lower taxes. He's going to fight for lower spending so our children and grandchildren can stay here in West Michigan.

Paid for by Republican Member Committee Fund. Not authorized by any candidate or candidate committee.

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